

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION</b>	)	<b>CASE NO. 1:17-MD-2804</b>
	)	
	)	<b>JUDGE POLSTER</b>
<b>THIS DOCUMENT RELATES TO:</b>	)	
<i>“All Cases”</i>	)	
	)	<b><u>ORDER REGARDING PRODUCTION</u></b>
	)	<b><u>OF INFORMATION BY CERTAIN</u></b>
	)	<b><u>NON-LITIGATING DEFENDANTS</u></b>

This Court earlier identified about 55 “Non-Litigating Defendants” and, over the past year, held conferences with them and the PEC periodically to facilitate settlement discussions. *See* docket no. 4380 (identifying the “ten Distributor and [ten] Manufacturer Defendant Families most frequently named in MDL cases” other than the major litigating defendants, and directing each Defendant Family to state “whether [it is] interested or currently engaged in active settlement negotiations”); docket no. 4670 (identifying about 35 additional Defendant Families). Many of these Defendant Families<sup>1</sup> are now engaged in active mediation, and many have produced information to the PEC for this purpose.

Some Defendant Families, however, have been dilatory or have not produced sufficient

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<sup>1</sup> By “Defendant Families,” the Court means all entities that are related. For example, “H.D. Smith, LLC” includes “family member” defendants H.D. Smith, LLC; H.D. Smith Holding Company; H.D. Smith Holdings, LLC; and H.D. Smith Wholesale Drug Co.

information to make mediation possible. Moreover, nearly all of the information the PEC needs to make mediation possible will be discoverable in litigation. Accordingly, to facilitate the settlement process, the Court now **ORDERS** each Defendant Family listed at the end of this Order<sup>2</sup> to produce promptly to plaintiffs' liaison counsel Peter H. Weinberger a separate status report, under Evidence Rule 408, setting forth the following information, to the extent it has not already done so:

- (1) the volume of dosage units of opioid products manufactured or distributed or dispensed by the Defendant Family, by calendar year, between 2006-2018; and (2) where its opioid products were shipped or distributed to, by calendar year, between 2006-2018.<sup>3</sup>
- Financial Statements and Profit & Loss Statements for its last two fiscal years (audited Statements if available).

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<sup>2</sup> Although the Court listed a total of 55 Defendant Families in docket nos. 4380 and 4670, this Order does not apply to a handful of them for various reasons, such as dismissal or settlement of all cases against the Defendant Family. This Order *does* include Discount Drug Mart, which was not earlier listed in docket nos. 4380 and 4670 due to oversight.

Finally, the production obligations stated in this Order ***do not apply*** if the listed defendant has not been served in any MDL case where it was named—a circumstance the Court cannot divine from ECF. Any subsequent motion by Plaintiffs to compel production of information from a listed defendant must include proof that the defendant was served properly in at least one MDL case.

<sup>3</sup> Although the Court currently requires production of this information through calendar year 2018, the Court strongly encourages each Defendant Family to voluntarily produce this information through calendar year 2020. This is *at least* what the Court would require in discovery of a specific case, and is highly likely to help in mediation. Having just recently ordered production only through 2018 (*see* docket no. 4670), however, the Court will not require production through 2020 at this time.

The Court may also later order discovery of similar and additional information in the context of litigation of a specific case, and not covered by Evidence Rule 408. *See, e.g.*, docket no. 3170 (requiring production of far more dispensing information in the Track One cases).

**IT IS SO ORDERED.**

*/s/ Dan Aaron Polster*

**DAN AARON POLSTER**

**UNITED STATES DISTRICT JUDGE**

**Dated:** April 14, 2023

*[Note: the Defendant Families to which this Order applies are listed on the next page]*

### **Defendant Families**

Abbott Laboratories	Louisiana Wholesale Drug Co., Inc.
Ahold Delhaize	Masters Pharmaceutical
Alvogen Inc.	Morris & Dickson Co.
Amneal Pharmaceuticals	Mylan Inc.
Apotex, Inc.	N.C. Mutual Wholesale Drug Co. (a/k/a
Assertio f/k/a Depomed, Inc.	Mutual Drug)
Associated Pharmacies Inc.	Pfizer
Auburn Pharmaceuticals	Pharmacy Buying Association, Inc.
Bloodworth Wholesale Drugs, Inc.	Prescription Supply, Inc.
Costco	Quest Pharmaceutical
Dakota Drug, Inc.	Richie Pharmacal Co.
Discount Drug Mart	Sandoz Inc./Novartis
Ethex Corporation	Sun Pharmaceutical Industries
GCP Pharma, LLC	Supervalve Inc.
Henry Schein, Inc.	Target Corporation
Hikma Pharmaceuticals PLC	Thrifty White
Hy-Vee, Inc.	Top Rx, LLC
Indivior Inc.	Value Drug Company
J.M. Smith Corporation/ Burlington Drug	Winn-Dixie
Keysource Medical, Inc.	Zydus Pharmaceuticals (USA), Inc.
KVK-Tech, Inc.	